

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Southern California Water Company (U 133 W) for an Order Authorizing it to Increase Rates for Water Service by \$15,377,000 or 19.34% in 2004; by \$6,642,000 or 6.98% in 2005; and by \$6,629,700 or 6.51% in 2006 in its Metropolitan Service Area.

Application 03-10-006

**RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES TO
SOUTHERN CALIFORNIA WATER COMPANY'S MOTION FOR
INTERIM RATE RELIEF**

I. INTRODUCTION.

The Southern California Water Company's (So Cal Water) motion is inappropriate and unfounded. Specifically, So Cal Water's reliance on Public Utilities (PU) Code §455.2 is misplaced because section 455.2 is not applicable to So Cal Water's current general rate case (GRC) application. Section 455.2 applies only to applications filed under the Rate Case Plan (RCP) that has yet to be revised by the Commission and not to the currently existing RCP. (See D.90-80-045, *In Re Schedule for Processing Rate Case Applications by Water Utilities*, 37 CPUC 2d 175.) Moreover, because the delays in the proceeding of which So Cal Water complains result primarily from So Cal Water's own actions, So Cal Water should be estopped from seeking interim relief under PU Code §455.2.

II. DISCUSSION.

A. The Legislature Intended Section 455.2 To Apply To Applications Filed Under A Yet-To-Be Revised Rate Case Plan.

That §455.2 is inapplicable to GRC applications filed under the current RCP is supported by the rules of statutory construction. The California Supreme Court in *People v. Ledesma*, (1977) 6 Cal. 4th 90,95 stated:

“The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. But ‘[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ [Citations.] Thus, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.’ [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’ [Citation.]”¹

As discussed in detail below, applying the language of PU Code § 455.2 to So Cal Water’s application results in an absurdity. The court in *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 256-257 stated “[t]he cardinal principle of statutory construction is that, absent a single meaning of the statute apparent on its face, we must give it an interpretation based upon the legislative intent with which it was passed, and where the Legislature has expressly declared its intent, we must accept the declaration.” Therefore, it is appropriate to look to the legislative declaration for section 445.2.

The legislative declaration for section 445.2 states:

The Legislature finds and declares all of the following:

¹ See also *DeYoung v. San Diego*, (1983) 147 Cal. App. 3d 11, 17 (a statutory provision should be given a reasonable and common sense interpretation consistent with the apparent purpose, which will result in wise policy rather than mischief and absurdity).

SEC.1. (a) The rate case plan for water corporations adopted by the Public Utilities Commission in Decision No. 90-08-045 has not been updated or revised to reflect statutes since its promulgation in 1990...

(c) Not later than December 31, 2003, the commission should review and revise, as appropriate, the rate case plan for water corporations adopted by Decision No. 90-08-045 to ensure its consistency with relevant statutes and commission practice in addressing rate applications by water corporations...

In requiring the Commission to review and revise the RCP to ensure its consistency with section 455.2 (and other relevant statutes), the Legislature explicitly recognizes that the current RCP may be inconsistent with section 455.2. In view of that recognition, the Legislature set forth a deadline (December 31, 2003) by which the Commission was to reconcile inconsistencies with Commission practice. Commission practice and the practical realities are that review of GRC applications by Class A water companies take from 7 to 8 months. It is necessary to revise the RCP in order to implement section 455.2 without interfering with the Commission practice of adequately reviewing Class A water utility GRC applications. Until such revision is made, section 455.2 is inapplicable.

B. Applying §455.2 to So Cal Water's Application Would Produce An Absurd and Inequitable Result.

Public Utilities Code §455.2 provides in relevant part:

(a) The Commission shall issue its final decision on a general rate case application of a water corporation with greater than 10,000 service connections in a manner that ensures that the commission decision becomes effective on the first day of the first test year in the general rate increase application.

(b) If the commission's decision is not effective in accordance with subdivision (a), the applicant may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates. The interim rates shall be effective on the first day of

the first test year in the general rate case application...
(Emphasis added.)

Section 455.2 was not intended by the Legislature, and cannot practicably be made, to apply to GRC applications filed under the existing RCP. This is particularly true in the case of So Cal Water which, pursuant to the current RCP, was supposed to file in January 2001 but instead filed its notice of intent to file a general rate case application in January 2003 and filed its actual application on September 11, 2003.

The current RCP designates all Class A water companies as either January or July filers for the purpose of filing their general rate case (GCR) applications. The RCP provides for the test year to begin on January 1 of the year following the date that the GRC is filed, and sets forth a schedule whereby the Commission will issue a final decision in from 7 to 8 months after filing, depending on the number of districts involved.² By failing to comply with the current GRC filing schedule So Cal Water effectively and substantially increased the number (and size) of the districts now presenting GRCs. This increase is at the root of the delays of which So Cal Water now complains. Thus, So Cal Water's late filed NOI and application undermine any claim it may have had that the Commission bears responsibility for its not receiving a decision in a timely fashion. Indeed, because the delays in the proceeding are more appropriately, if not exclusively, attributed to So Cal Water's late filed NOI and application So Cal Water's should be estopped from obtaining interim relief under PU Code §455.2.³

² Under the current RCP the Commission has 214 plus days within which to reach a final decision on a single district Class A water company. The existing RCP allows the Commission the following time limits to issue a final decision for multi-district class A water companies; 224 plus days for 2-4 districts, 249 plus days for 5 to 6 districts and 259 plus days for more than 7 districts.

³ "An estoppel arises when one is concluded and forbidden by law to speak against his own act or deed." Blacks Law Dictionary

III. CONCLUSION.

So Cal Water's request for interim relief is contrary to the legislative intent underlying §455.2 and its need for such relief is self induced. Accordingly, ORA respectfully requests that So Cal Water's motion for interim rates pursuant to PU Code §455.2 be denied.

Respectfully submitted,

Darwin E. Farrar
Staff Attorney

Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1599
Fax: (415) 703-2262

January 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled “RESPONSE OF THE OFFICE OF RATEPAYER ADVOCATES TO SOUTHERN CALIFORNIA WATER COMPANY’S MOTION FOR INTERIM RATE” upon all known parties of record in this proceeding by mailing by first-class mail a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 15^h day of January 2004.

Angelita F. Marinda